STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JOHN P. DUFFY,	)	
	)	
Complainant,	)	
	)	
and	)	CHARGE NO:
	)	EEOC NO: N/A
CHRISTIE CLINIC ASSOCIATION AND ELLEN E. RONEY, M.D.,	)	ALS NO: S-11998
	)	
	)	
Respondents.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to me on a motion by Respondents, Christie Clinic, P.C. and Ellen Roney, M.D., to dismiss this case on grounds of lack of jurisdiction. Complainant has filed a response. The Department of Human Rights has also filed a response to the motion to dismiss. Complainant has filed a motion to adopt an amicus curiae brief of ADAPT of Illinois, and Respondent has filed a response to this motion.

Contentions of the Parties

Respondents submit that the Commission lacks jurisdiction over this public accommodation case since a medical office is not a "place of public accommodation" as defined by section 5-101(A) of the Human Rights Act (775 ILCS 5/5-101(A)), and Dr. Roney cannot be liable for refusing Complainant's request for medical services where the medical office itself would not be a "place of public accommodation" under the Human Rights Act. The Department of Human Rights similarly maintains that Respondents' medical clinic is not a place of public accommodation as defined under the Human Rights Act. Complainant, however, contends that he has stated a valid cause of action since, according to Complainant, a medical clinic that dispenses medical services to the public qualifies as a "place of public accommodation" under section 5-101(A) of the Human Rights Act.

Findings of Fact

Based upon the record in this matter and taking Complainant's allegations in his Complaint as being true, I make the following findings of fact:

1. On December 4, 2001, Complainant submitted a document entitled "Charge of Discrimination" alleging that on June 11, 2001 Respondents Christie Clinic (hereinafter referred to as the "Clinic") and Dr. Ellen Roney denied him the full and equal enjoyment of public facilities because of his physical handicap (cerebral palsy, osteoporosis and hearing loss) when they denied him his right to continue medical treatment at the Clinic's Internal Medicine Department. Complainant signed the area of the document, which calls for the "Signature of Complainant", but did not sign the area of the document, which provides: "I declare under penalty of perjury that the forgoing is true and correct." The first page of the document contained a notary stamp near Complainant's signature.

2. Complainant's document was stamped as received by the Department's intake unit. The record is silent as to what, if anything, the Department did with Complainant's document, although the record reflects that the Department did not assign a charge number to the document.

3. On December 11, 2002, Complainant filed his own verified Complaint with the Commission, alleging that the Department had failed to file either a report indicating a lack of substantial evidence or a complaint of discrimination. The Complaint essentially repeated the allegations in Complainant's "Charge", along with the additional allegation that Respondents advised him on June 11, 2001 that they would no longer offer him medical treatment thirty days after the date of the letter.

4. On March 10, 2003, Respondents filed a motion to dismiss, arguing that a medical clinic is not a "place of public accommodation" within the meaning of the Human Rights Act.

5. On April 17, 2003, Complainant filed a response to the motion to dismiss, essentially asserting that: (1) Respondents' Clinic was a place of public accommodation since it offered medical services to the general public; and (2) he had been receiving medical treatment from the Clinic since 1985 and was aware that the Clinic had accepted Medicare and Medicaid patients.

6. On July 7, 2003, the Department of Human Rights filed a response to the motion to dismiss that essentially agreed with Respondents that their Clinic was not a "business" for purposes of imposing liability under the public accommodation provisions of section 5-101(A)(1) of the Human Rights Act.

7. On July 31, 2003, ADAPT of Illinois filed a motion seeking leave to file an amicus curiae brief on behalf of the Complainant. The motion was denied without prejudice on August 13, 2003.

8. On August 27, 2003, Complainant filed a motion to adopt the amicus curiae brief of ADAPT of Illinois.

Conclusions of Law

1. Complainant is an "aggrieved person" as that term is defined under the Human Rights Act.

2. A medical clinic dispensing medical services to the public is not a "business" as contemplated under section 5-101(A)(1) of the Human Rights Act, and thus does not qualify as a "place of public accommodation" as that term is defined under the Human Rights Act.

3. The filing of an *amicus curiae* brief is appropriate only after a recommended order and decision has been entered, and the matter is pending before a Commission panel.

Determination

This matter should be dismissed with prejudice because the Commission lacks jurisdiction over Complainant's Complaint alleging under the public accommodation provisions

of the Human Rights Act handicap discrimination through Respondents' denial of medical services to Complainant.

Discussion

Motion to adopt brief.

Complainant has filed a motion seeking leave to adopt the proposed *amicus curiae* brief of ADAPT of Illinois. In the motion, Complainant maintains that the brief raises significant policy arguments that are supportive of his position before the Commission. However, as Respondent notes, I denied without prejudice the motion by ADAPT of Illinois to file its proposed *amicus curiae* brief because: (1) the prevailing practice in Illinois is to permit such briefs only when the matter is at an appellate stage (see, for example, Supreme Court Rule 345); and (2) the Commission has historically permitted the Department and other parties leave to file an amicus brief only after a recommended order and decision has been entered. Indeed, Complainant has already filed an extensive brief raising similar arguments raised by ADAPT of Illinois. Accordingly, I will deny Complainant's motion to adopt the proposed amicus curiae brief as a supplement to his responsive brief to the pending motion for summary decision.

Department's failure to recognize Complainant's Charge of Discrimination.

Typically, when complainants want to contest matters before the Human Rights Commission, they are required to take the jurisdictional step of filing a Charge of Discrimination with the Department of Human Rights within 180 days from the date of the adverse act. (See, 735 ILCS 7A-102(A)(1).) One of the purposes of this requirement is to permit the Department to conduct an investigation on the allegations in the Charge so that it can either make a finding of lack of substantial evidence or make a finding of substantial evidence and file a complaint on behalf of a complainant. That, however, did not happen in this case since the Department acknowledges that it took no action on Complainant's

tendered "Charge of Discrimination". Indeed, the Department did not assign a charge number to the document, and the record is silent as to whether the Department even contacted the Complainant to instruct him on any additional requirement that it deemed necessary as a condition precedent to the processing of Complainant's Charge.

The question though, remains as to whether the Department's failure to recognize Complainant's tendered document as a "Charge of Discrimination" serves to deprive the Commission of jurisdiction to consider his Complaint that he filed directly with the Commission. In this regard, the record reflects that: (1) Complainant alerted the Department to the existence of his claim by filing a "Charge" within 180 days from the date of the adverse act; and (2) the instant Complaint was filed within the 365 to 395-day window for filing such complaints directly with the Commission if one can properly view the date that Complainant tendered his "Charge" as the operative date for the running of the one-year limitation period for the Department to conduct its investigation. (See, 775 ILCS 7A-102(G)(1).) The Department has provided no alternative date for the running of the one-year investigational period, and there is no obvious defect in Complainant's tendered "Charge" that could support the Department's apparent decision not to treat Complainant's document as a valid Charge of Discrimination. Indeed, the United States Supreme Court, in **Logan v. Zimmerman Brush Co.**, 455 U.S. 422, 102 S.Ct. 1148 (1982) has determined that a state agency's failure to act in accordance with a state statute cannot deprive a litigant of his or her cause of action. Accordingly, under these unique circumstances, I find that: (1) December 4, 2001 was the operative date for beginning the Department's one-year period for conducting an investigation into the allegations in Complainant's Charge of Discrimination; and (2) the Department's failure to conduct any sort of investigation or assign any charge number to the document cannot deprive the Commission from considering the allegations of Complainant's otherwise timely Complaint.

The merits.

According to Complainant's Complaint and his affidavit in support of his response to the pending motion for summary decision, Complainant began receiving medical services at Respondents' Clinic in 1985 and was suffering from cerebral palsy, recurrent kidney stones, hearing loss and osteoporosis at the time of Respondents' denial of medical treatment in July of 2001. Complainant further asserts that when he was told about the cessation of medical services, Respondent Dr. Roney informed him that his behavior at the Clinic, as well as his failure to follow prescribed medical treatment, were the reasons for the decision not to offer him medical treatment. Complainant, though, submits that the real reason for the discontinuation of his medical treatment was his handicapped condition.

At first blush, however, Complainant's allegations of handicap discrimination seem a bit odd since he admits that up until July of 2001, the Clinic had actually provided him with medical services going back to 1985. Indeed, given the broad definition of what constitutes a "handicapped condition" under the Human Rights Act, it may be difficult for any existing patient to prove handicap discrimination where a medical clinic is treating other individuals with similar or other types of conditions that qualify as handicaps under the Human Rights Act. Of course, this argument assumes that Complainant can state a valid cause of action, and Respondents have argued at this early stage of the proceedings that Complainant cannot state a claim under the public accommodation provisions of the Human Rights Act because the Clinic is not a covered "business" as that term is contemplated under section 5-101(A) of the Human Rights Act (775 ILCS 5/5-101(A)). Section 5-101(A) defines a place of public accommodation as:

> "a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods or services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public."

Admittedly, Respondents can cite to no case law that directly states that a medical office is not a covered business under the Human Rights Act. However, Respondents note that the Appellate Court, in **Baksh v. Human Rights Commission**, 304 Ill.App.3d 995, 711 N.E.2d 1187, 238 Ill.Dec. 313 (1st Dist. 1999), petitions for leave to appeal Nos. 89849 and 89850 denied October 6, 1999, considered the related question as to whether a dental office was a covered business under the public accommodation provisions of the Human Rights Act. There, the complainant, who had informed his dentist of the fact that he had been infected with the human immunodeficiency virus (HIV), alleged that his dentist refused to treat him on the basis of his handicap. During the public hearing, the dentist testified that: (1) at the time the complainant informed him of his HIV status in 1986, his dental hygienist indicated a reluctance to clean complainant's teeth because she did not know much about the treatment of individuals with HIV; (2) he attempted to refer the complainant to a special dental clinic that had been specifically set up to treat patients who had tested positive for HIV; and (3) he also felt that because of his lack of knowledge about HIV it would have been safer for complainant to receive treatment from the special dental clinic.

Ultimately, though, the Commission found that the dentist had violated the public accommodations provisions of the Human Rights Act on the basis of the complainant's handicap when he refused to provide dental services because of the complainant's HIV status. However, the Appellate Court, in reversing the Commission, concluded that the Commission lacked subject-matter jurisdiction over the case because a dental office was not a "place of public accommodation". Specifically, the panel majority focused on "the nature of medical, legal or dental services" and noted that none of the services offered by the dentist were similar to the services provided in a "restaurant, pub or bookstore" that the Illinois Supreme Court in **Board of Trustees of Southern Illinois v. Department of Human Rights**, 636 N.E.2d 528, 201 Ill.Dec. 96 (1994) found to be typical business entities covered under section 5-101(A) of the Human Rights Act (775 ILCS 5/5-101(A)). **Baksh**, 711 N.E.2d at 424, 238 Ill.Dec. at 321.

In his response to the instant motion to dismiss, Complainant argues that the reasoning in **Baksh** should not be followed here since: (1) the factual scenario in **Baksh** was limited to dental services; and (2) Respondents' Clinic fits easily into the definition of a "business" under section 5-101(A)'s definition of public accommodation because it is an entity whose services are made available to the public. True enough, the factual setting **Baksh** concerned only the issue as to whether a dental office was included under the Act's definition of a place of public accommodation. But the Complainant has not demonstrated why there is any principled difference between a dental and a medical office, especially where the **Baksh** court observed that a dental practice, like a medical or legal practice, was not an ordinary commercial enterprise. **Baksh** 711 N.E.2d at 423, 238 Ill.Dec. at 320.

Too, while I agree with Complainant that the definition of a place of public accommodation in section 5-101(A) includes many different types of businesses, Complainant's approach to this issue, which lumps all businesses under section 5-101(A) as long as they provide services to the entire public[1], was expressly rejected by the **Baksh** court majority. Indeed, the various arguments set forth by Complainant (i.e., that: (1) the **Baksh** majority, in finding that a dental office is not a "place of public accommodation", misread the Illinois Supreme Court decision in **Board of Trustees**; (2) the list of businesses mentioned in section 5-101(A)(2) does not contain a common theme so as to allow the Commission to make general observations as to the types of businesses covered under section 5-101(A); and (3) the **Baksh** majority wrongfully relied upon the treatment given to medical services under the Consumer Fraud and Deceptive Practices Act when finding that a dental office was not included in the definition of place of public accommodation) were all found to be without merit by the **Baksh** majority and cannot be rehashed here. Accordingly, because the **Baksh** court specifically equated dental and medical services when exempting a dental office from section

5-101(A) of the Human Rights Act, I find that a medical office is also excluded from the definition of public place of accommodation under section 5-101(A) of the Human Rights Act.

Finally, Complainant argues that as a matter of policy, medical offices should be included within the definition of places of public accommodation under section 5-101(A) because Respondents would then be able to refuse patients on any number of covered bases under the Human Rights Act, including race or age. Indeed, Complainant maintains that it would be ironic if Respondents' position were adopted by the Commission since Respondents would be advancing a rule of law that would permit them to deny services to any protected classification of individuals, even though the Human Rights Act elsewhere prohibits them from refusing to hire these same protected individuals in an employment setting.[2] But, this result is exactly what occurred when the **Baksh** court ruled that the HIV-positive dental patient could not bring a public accommodation action against his dentist. Thus, in this respect, the only irony in this case would be to deny the medical professionals the same exclusion from the Human Rights Act that the **Baksh** court gave to dentists.

Recommendation

Thus, for all of the above reasons, I recommend that Complainant's motion to adopt the *amicus curiae* brief of ADAPT Illinois be denied, and that the Complaint of John P. Duffy be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 1st DAY OF DECEMBER, 2003

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[1] Complainant similarly submits that the public nature of Respondents' medical practice is evidenced by the fact that Respondents' Clinic markets itself as a comprehensive for-profit operation that accepts Medicare and Medicaid patients.

[2] This of course assumes that the medical practice has satisfied all of the jurisdictional requirements for establishing "employer" status under section 2-101(B)(1) of the Human Rights Act (775 ILCS 5/2-101(B)(1).